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(2)

NO. 09-1086

IN THE

SUPREME COURT OF THE UNITED STATES

MR CRESCENT CITY LLC, *et al.*,
Petitioners,

v.

DOUGLAS S. DRAPER, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION TO PETITION

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QUESTION PRESENTED

The federal removal statute, in 28 U.S.C. § 1447(c), provides that "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." The question presented is whether the Court of Appeals erred in affirming the District Court's ruling that this statute does not authorize the courts, upon entering an order of remand, to impose awards of attorney's fees and costs against counsel for removing parties.

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OPINIONS BELOW

The Petition erroneously includes an unreported decision of the United States District Court for the Middle District of Tennessee as one of the "opinions below" in this case. Pet. 1. (Petitioners reprinted this decision in the Appendix at A34.) That decision is not one of the "opinions and orders entered in the case." S. Ct. R. 14.1(d).

The Petition also neglects to include the order of the United States Bankruptcy Court for the District of Maryland that was the subject of the appeal in this case. That unreported order would be cited as *In re Crescent City Estates (MR Crescent City LLC* v. *Giannasca Crescent City LLC)*, Adv. No. 07-662 (Bkrtcy. D. Md. Oct. 22, 2008) (order resolving preliminary issues and requiring Rule 26(f) report). A copy of the order is reprinted in the Appendix to this brief at A1.

STATEMENT OF THE CASE

In February 2007, Michael McCrary and two entities he owned, MR Crescent City LLC and McCrary Crescent City LLC (collectively "McCrary") filed an action in the Circuit Court for Baltimore City against Stuart C. ("Neil") Fisher, Edward V. Giannasca II, Crescent City Estates LLC ("CCE"), and others. McCrary alleged that Mr. Fisher and Mr. Giannasca had misappropriated some $12 million in insurance proceeds payable to CCE. CCE was a Louisiana limited liability company, formed to acquire the Plaza Tower office building in New Orleans, with the intention of converting it to residential condominiums. McCrary claimed that he owned 50 percent of CCE and therefore was entitled

to a proportionate share of the insurance proceeds. Messrs. Fisher and Giannasca claimed that Mr. Fisher had acquired full ownership of CCE and therefore he alone was entitled to the insurance proceeds.

Respondent William J. Murphy began representing Mr. Fisher in May 2007, after Mr. Fisher's prior counsel withdrew. Mr. Murphy began representing Mr. Giannasca in June 2007 after Mr. Giannasca, who previously had no counsel, was held in default. Through the summer of 2007, Mr. Murphy and his firm made extraordinary efforts to bring their clients into compliance with discovery obligations and outstanding court orders. The clients made the task exceedingly difficult.

Mr. Fisher and Mr. Giannasca consistently maintained that the litigation belonged in Louisiana, where the Plaza Tower was located and where CCE was formed. On August 23, 2007, CCE, represented by respondent Douglas D. Draper, filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Louisiana. CCE then removed the Baltimore City action to the United States District Court for the District of Maryland, where it was automatically assigned to the Bankruptcy Court. The Notice of Removal relied on 28 U.S.C. § 1452, which permits removal of "any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title." Section 1334 creates exclusive jurisdiction in the district courts for "all cases under title 11," and original but not exclusive jurisdiction of "all civil

proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334. Thus, the Bankruptcy Court had jurisdiction over the state-court litigation to the extent it involved claims by or against CCE, and the Complaint included an express derivative claim brought by McCrary on behalf of CCE. The Notice of Removal also asserted that the Bankruptcy Court had jurisdiction over all other claims in the case because the Complaint sought return of the insurance proceeds (or damages for conversion of the insurance proceeds), and the insurance proceeds plainly belonged to the debtor CCE in the first instance.

CCE moved to transfer the action to the Louisiana Bankruptcy Court, and Mr. McCrary opposed the motion. On September 7, 2007, Mr. McCrary filed a motion to remand, which sought fees from defendants Fisher and Giannasca pursuant to 28 U.S.C. § 1447(c) – but not from attorneys Draper and Murphy (hereafter, "Attorneys").

On October 2, 2007, Judge Keir of the Maryland Bankruptcy Court held a hearing on the motion to remand. He observed that at least part of the case was removable, but decided to await the outcome of a pending motion to dismiss the bankruptcy in Louisiana before ruling on the motion to remand. On March 14, 2008, however, Judge Keir entered an order remanding the case to the Circuit Court for Baltimore City "with the exception of the request for attorney's fees."

The parties (through other counsel) litigated various issues in the Louisiana Bankruptcy Court, including the authority of Mr. Fisher and Mr. Giannasca to have filed a petition for relief on behalf

of CCE. Neither Respondent was materially involved in those proceedings. On March 20, 2008, the Louisiana Bankruptcy Court dismissed the CCE bankruptcy case after a three-day hearing. In a written order dated March 25, 2008, the Court held that Mr. Giannasca and Mr. Fisher did not have authority to file the petition for relief on behalf of CCE.

On March 24, 2008, Mr. Murphy sent notice to his clients stating his intention to withdraw as their counsel. Judge Keir granted Mr. Murphy's motion to withdraw on April 7, 2008. Mr. Murphy also withdrew as counsel for his clients in the state-court litigation. Mr. Draper had withdrawn as counsel for CCE several months before the remand order. By neglecting to mention these facts, the Petition wrongly implies that the Attorneys were involved when the Baltimore City Circuit Court entered a $33 million judgment against Fisher and Giannasca (later vacated on appeal). The Petition also wrongly implies that the state court judge's commentary – which is not part of the record below – was somehow directed at the Attorneys.

On March 25, 2008, McCrary filed an "Amended Motion to Remand" which asserted, for the first time, a claim for attorney's fees in the approximate amount of $167,000 against Attorneys Draper and Murphy. The amended remand motion, like the original version, was predicated solely on 28 U.S.C. § 1447(c).

Attorneys Draper and Murphy filed separate oppositions to the amended remand motion, raising several preliminary issues aimed at the Bankruptcy Court's power to award fees against them, including

the issue decided in the appeals below. After briefing and a hearing, Judge Keir entered an order denying the preliminary issues raised by the Attorneys.

The Attorneys filed separate motions for leave to appeal to the District Court pursuant to 28 U.S.C. § 158(a). Judge Keir certified the appeal pursuant to local procedure, and District Judge Garbis granted leave to appeal. After full briefing and oral argument, Judge Garbis issued a written opinion and order reversing Judge Keir's order, and entering judgment on behalf of the Attorneys. Judge Garbis recognized the general principle that federal fee-shifting statutes do not authorize awards against counsel unless the text of the statute says so expressly. He concluded that the legislative history supported the view that Congress did not intend to authorize awards against counsel through section 1447(c), but rather that Congress expected counsel's conduct in removal proceedings to be governed by Rule 11 of the Federal Rules of Civil Procedure. Pet. A30. He also found that the text of section 1447(c) applied to parties, not counsel. Pet. A30-31.

McCrary appealed to the Court of Appeals for the Fourth Circuit. In a published decision written by Judge Wilkinson, the Court of Appeals ruled unanimously that § 1447(c) does not authorize an award of costs and fees against counsel for a party. The Court's comprehensive opinion considered the statutory text, the legislative history, the presumption against fee-shifting embodied in the "American Rule," a decision of this Court effectively holding that a fee-shifting statute applies only to parties unless the text refers to counsel, decisions of numerous courts of appeals reaching the same conclusion in the context of other fee-shifting

statutes, the interaction of § 1447(c) with other fee-shifting provisions that clearly do apply to counsel (like Rule 11), and the public policy implications of applying the statute to counsel. All these factors pointed in the same direction, and the Court of Appeals readily concluded that the District Court's judgment should be affirmed.

REASONS WHY THE WRIT SHOULD BE DENIED

The Petition falls far short of this Court's controlling standards for certiorari. Petitioners' attempt to manufacture a split among the federal courts of appeals is frivolous. Their argument that the Court of Appeals in this case misinterpreted the statute, and misapplied other principles of federal law, is flawed by a failure to analyze what the Court actually said. The decision below is comprehensive, thoughtful, and persuasive. It is by far the most thorough discussion of the issue by any court or commentator thus far and, as the Court and the parties below all recognized, it is the *only* appellate decision on point. The next three most serious considerations of the issue are the District Court's decision in this case, and two other district court decisions it followed. The district court decisions cited by Petitioners throughout this matter are all rote applications of a single, highly unpersuasive district court decision. There was never a conflict in the circuits and, after the comprehensive decisions below, there is no meaningful conflict in the law at all. Finally, Petitioners have failed to demonstrate why the unusual factual posture of this case gives

rise to a question of federal law that is important enough to compel review by this Court.

I. The Court of Appeals' Decision is not in Conflict with any Other Appellate Decision.

It is untrue that the Court of Appeals' decision "conflicts with other circuit courts," something the Petitioners state in a section heading but fail to support in the Petition text. Pet. 12. The Court of Appeals itself correctly observed in its published decision that "[a]s of yet, no circuit court has confronted this issue." Pet. A4. Petitioners did not argue below that any other federal appellate court had decided the issue, but they now cite two unpublished decisions of the Court of Appeals for the Sixth Circuit and one published (but inapposite) decision from the Court of Appeals for the Ninth Circuit.

It is not hard to see why these cases were not cited by the parties or the courts below. In *Taylor* v. *Currie*, 208 Fed. Appx. 401 (C.A. 6 2006), the court's unreported per curiam decision affirms an award against counsel under *three* federal authorities: Rule 11, 28 U.S.C. § 1927, and 28 U.S.C. § 1447(c), without analyzing any one of them or even distinguishing among them. Rule 11 and § 1927, of course, expressly permit fee awards against counsel, but the standards and procedures under those provisions are not the same as those under § 1447(c) (as the Court of Appeals in this case recognized). The *Taylor* court's two-paragraph opinion bears no indication that the court or the parties contemplated whether the three statutes were governed by different standards. The district court's decision in

Taylor is not reported even by an electronic service, so anyone who wanted to understand the appellate court's reasoning would have to retrieve the unpublished order from the Pacer system, and even then would find no analysis of whether § 1447(c) alone permits a fee award against counsel.

In *Cedarstone Bank* v. *Music City RV, LLC*, 2009 W.L. 4307582 (C.A. 6 2009), the court held only that it had no jurisdiction to consider the appeal. The opinion contains no hint that the court contemplated whether § 1447(c) permits a fee award against counsel.[1] Petitioners' assertion that "the circuit court clearly had no intention of deviating from *Taylor*" (Pet. 16) – the unreported two-paragraph per curiam decision that itself contains no analysis of § 1447(c) – finds no support in the opinion.

Finally, in *In re DeVille*, 361 F.3d 539 (C.A. 9 2004), the bankruptcy court had *declined* to award sanctions under § 1447(c), and the appellate court merely noted that fact. The decision contains no discussion of a court's authority to award fees against counsel under § 1447(c). In short, Petitioners have not shown any conflict in the circuits at all, much less a significant conflict over an important question of federal law that should be resolved by this Court.

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[1] In this instance, Petitioners *did* retrieve the unpublished district court decision from Pacer, and they cite that decision, not the court of appeals' decision, as evidence of a conflict. But the district court decision, reprinted in the Petitioner's Appendix, likewise contains no analysis of the question presented here. *See* Pet. A34.

II. The Conflicting District Court Decisions are not Well-Considered.

Petitioners continue to rely on a cluster of perfunctory district court decisions that awarded fees against counsel under § 1447(c). The Court of Appeals recognized that the district court cases were divided, Pet. A4, but it prudently declined to address the conflicting district court rationales, most likely because no district court had advanced a persuasive rationale to justify fee awards against counsel. Most of the cases simply cite *Wisconsin* v. *Missionaries to the Preborn*, 798 F. Supp. 542 (E.D. Wis. 1992), a decision that itself contains almost no analysis. The *Missionaries* court merely stated that § 1447(c) would be inconsistent with Rule 11 if it did not permit fee awards against counsel. The decision does not demonstrate that § 1447(c) and Rule 11 were intended to be consistent, nor offer a rationale for why they should be interpreted in a consistent fashion. In fact, the standards and purposes of the two rules are not identical. *E.g.*, *Moore* v. *Permanente Med. Group, Inc.*, 981 F.2d 443, 447 (C.A. 9 1992) (rejecting an argument that "fee awards against clients pursuant to section 1447(c) should be judged by the same standard as fee awards against attorneys under Rule 11").

In *Polanco* v. *21 Ardent Realty Corp.*, 121 B.R. 425 (S.D.N.Y. 1990), the entire opinion construing § 1447(c) is a single sentence containing no analysis at all. The court simply stated that, "[s]ince the removal was costly to the petitioner and her counsel, fees are hereby assessed pursuant to 28 U.S.C. § 1447(c) against [the lawyer and client] in the total amount of $2,500 . . . for wrongful removal of this

case." 121 B.R. at 428. The remaining district court decisions relied upon by Petitioners generally are unpublished and cursory orders. At most they rely solely on the *Missionaries* case, without independent analysis. *See Saxon* v. *Thomas*, 2007 W.L. 1115239 (W.D. La. Apr. 12, 2007), *aff'd*, 2007 W.L. 1974914 (W.D. La. June 29, 2007); *Game Time Laser Tag Adventure LLC* v. *MillsServices Corp.*, 2006 W.L. 2422593 (S.D. Ohio Aug. 22, 2006); *Peraza* v. *Mazak*, 2008 W.L. 186613 (M.D. Fla. Jan. 18, 2008).

By contrast, two earlier district court decisions have concluded that § 1447(c) does *not* authorize a fee award against counsel, and those decisions relied on appellate precedent holding that fee-shifting statutes do not apply to counsel without some express indication in the text. *See Creek Ventures LLC* v. *World Parts, LLC*, 2004 W.L. 1166642 (W.D.N.Y. 2004) and *Marketplace Illustrated, Inc.* v. *Intrex Travel, Inc.*, 1993 W.L. 405494 (W.D.N.Y. 1993). The District Court in this case also relied on that principle, and much more. In short, although the district court decisions were divided, the better reasoned decisions supported Respondents' view, and they presaged the holding reached by the Court of Appeals in this case. To the extent there was a conflict in the district courts, that conflict is hardly live or genuine after the Court of Appeals' thorough and persuasive decision in this case.

III. The Decision Below Accurately Interpreted the Statutory Text and Congressional Intent.

In their lead argument for review by this Court, Petitioners contend that the decision below

misinterprets "federal law" and is inconsistent with congressional intent. The federal law at issue apparently is this Court's decision in *Martin* v. *Franklin Capital Corp.*, 546 U.S. 132 (2005), but that case had nothing to do with whether § 1447(c) authorizes a fee award against counsel. Petitioners' main contention is that the Court of Appeals misinterpreted the legislative intent when Congress amended the removal statutes in the Judicial Improvements and Access to Justice Act of 1988, Pub. L. No. 100-702, § 1016, 102 Stat. 4642 (Nov. 19, 1988). Even if true, such an issue of statutory interpretation concerning a procedural matter would not alone present a compelling ground for certiorari.

But Petitioners' contention about legislative intent is not well-founded. The Court of Appeals, unlike Petitioners, engaged in a rigorous statutory analysis, beginning with the plain text of § 1447(c). The Court acknowledged that "the statutory text does not explicitly forbid fee awards against counsel," but concluded that "it does so implicitly." The Court explained that a fee award under § 1447(c) must accompany "[a]n order remanding the case," Pet. A9, which, as both the District Court and Court of Appeals observed, "would normally, if not inevitably, be contemplated as one that pertains to parties and not counsel." *Id.* Thus, "the most natural reading of § 1447(c) is that it applies solely to litigants, who have a genuine stake in whether or not the case is remanded – and not to attorneys, who may not even remain involved in the case post-remand." *Id.* The Court cited in support of its reasoning several decisions of this Court, all of which are ignored by Petitioners. Pet. A9-A10.

The Court of Appeals also provided a persuasive view of the legislative history that buttressed its reading of the text. The Court's analysis is grounded in concrete principles of statutory construction, rather than a fuzzy view of overall congressional "intent." The Court pointed out that the prior version of the statute required a removing party to post a removal bond as security for costs against a wrongful removal. The bond requirement applied only to parties and not to counsel, and nothing in the text or history of the statute suggested that Congress intended to modify that principle. The Court observed that throughout the legislative process Congress never mentioned imposing liability against counsel, and it would "def[y] common sense to think that Congress wished to expand fee liability to encompass lawyers but failed to say anything at all about that wish, at any point, during the statute's consideration." The Court cited a closely analogous decision of this Court for the proposition that "[s]uch a bold departure from traditional practice would have surely drawn more explicit statutory language and legislative comment." Pet. A10 (citing *Fogerty* v. *Fantasy, Inc.*, 510 U.S. 517, 534 (1994)).

Finally, the Court below relied on this Court's American Rule precedents prohibiting fee-shifting absent a clear indication of congressional intent. The Court explained that under the American Rule, fee-shifting statutes are narrowly construed because they are in derogation of the common law. Pet. A7. Because parties rather than counsel ordinarily obtain the benefits and incur the costs of litigation, the American Rule implies that parties should remain responsible under a fee-shifting statute unless counsel are mentioned. Again, Petitioners do

not cite the precedents of this Court upon which the Court of Appeals relied, much less explain why they are inapposite.

IV. The Decision Below Conforms to Precedents of this Court and of Other Appellate Courts Interpreting Similar Statutes.

In *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752 (1980), this Court considered fee-shifting under 42 U.S.C. § 1988 and § 2000e-5(k). The text of these statutes is materially indistinguishable from § 1447(c): all three permit fee-shifting without indicating who is obligated to pay the fees. In *Roadway*, this Court concluded that neither § 1988 nor § 2000e-5(k) authorized an award against counsel, because neither statute "makes any mention of attorney liability for costs and fees." 447 U.S. at 761. The Court of Appeals concluded that *Roadway* "fairly stands for the more general proposition that, presumptively, when a fee-shifting statute is silent about who pays attorneys' fees, parties – not attorneys – are accountable." Pet. A12. Petitioners do not mention *Roadway*.

Nor do Petitioners mention decisions from numerous federal courts of appeals all holding, "in a wide array of contexts," that fee-shifting statutes do not apply to counsel unless the statutory text so indicates. Pet. A13 (citing *Amlong & Amlong, P.A.* v. *Denny's, Inc.*, 500 F.3d 1230, 1238 (C.A. 11 2007); *Steinert* v. *Winn Group, Inc.*, 440 F.3d 1214, 1222 (C.A. 10 2006); *Foster* v. *Mydas Assocs., Inc.*, 943 F.2d 139, 142 (C.A. 1 1991); *Brown* v. *Borough of Chambersburg*, 903 F.2d 274, 276-77 (C.A. 3 1990);

Healey v. Chelsea Res., Ltd., 947 F.2d 611, 624 (C.A. 2 1991); *Pfingston* v. *Ronan Eng'g Co.*, 284 F.3d 999, 1005-06 (C.A. 9 2002); *Heckethorn* v. *Sunan Corp.*, 992 F.2d 240, 242 (C.A. 9 1993); *Crescent Publ'g Group, Inc.* v. *Playboy Enters., Inc.*, 246 F.3d 142, 150 (C.A. 2 2001). Together with the Court of Appeals' decision in this case, the federal appellate courts uniformly agree that fee-shifting statutes in the nature of § 1447(c) do not apply to counsel. There is no conflict among the appellate courts warranting review by this Court.[2]

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[2] In their reply brief in the Court of Appeals, Petitioners for the first time analogized their position to the availability of fees against counsel pursuant to Rule 38 of the Federal Rules of Appellate Procedure and its affiliated statute, 28 U.S.C. § 1912. (Petitioners also cite those provisions in the Petition.) As the Court of Appeals pointed out, however, Rule 38 and § 1912 are "not true fee-shifting statutes," like § 1988 and the other statutes discussed in the cases cited above. Following this Court's precedent, the Court of Appeals concluded that it should interpret "similar fee provisions . . . alike." Pet. A20 (quoting *Fogerty* v. *Fantasy, Inc.*, 510 U.S. 517, 537 (1994)). In addition, Rule 38 and § 1912 apply only on appeal, where the purposes and effect of fee-shifting are often quite different than during trial proceedings. Moreover, because Rule 11 does not apply on appeal, *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 3[illegible], 407-08 (1990), this Court has read Rule 38 as the basis for appellate fee-shifting, suggesting that the two rules should be interpreted similarly. *See id.* Rule 11, of course, explicitly applies to attorneys, and thus Rule 38 is naturally interpreted the same way. Rule 38, like Rule 11, also includes various procedural protections for respondents that are not available under § 1447(c).

V. The Decision Below Properly Balances Policy Considerations.

The Court of Appeals carefully considered the policy implications of construing § 1447(c) to apply to counsel, and the Court concluded that this factor also weighed against Petitioners. As the Court explained, imposing fee awards against counsel could generate collateral litigation at an inopportune time – in the middle of litigation rather than at the end, when most fee-shifting statutes take effect. Pet. A15. Because § 1447(c) gives no guidance as to when courts should hold counsel liable, courts could be asked to adjudicate disputes between lawyers and clients even as the lawyer is supposed to be representing the client on remand. *See id.* Moreover, "[f]orcing an attorney to defend his actions in the midst of litigation might create a conflict of interest . . . or require the attorney to reveal privileged and confidential information." *Id.* And exposing lawyers to liability under the § 1447(c) standard, as opposed to the familiar and more stringent standards of Rule 11 and § 1927, could both chill the right of removal and put a lawyer personally at risk for acting in a representational capacity as an advocate, rather than for committing misconduct. The Court properly concluded that these factors counseled against attorney liability under § 1447(c), especially given the lack of textual support or legislative intent to impose liability on attorneys. The Court, like Congress itself in the legislative history of § 1447(c), recognized that Rule 11, § 1927, and the courts' inherent powers would be available to confine counsel who commit misconduct, including misconduct in removal proceedings. Pet. A17. But

those provisions have never been at issue in this litigation.

VI. Petitioners Have Not Demonstrated a Compelling Reason for Review by this Court.

Petitioners seem not to have contemplated why the decision below is the first appellate case on point, notwithstanding that the removal statute was amended to provide for fee awards more than 20 years ago. The most likely reason is that awards under § 1447(c), unlike awards under § 1988 and many other fee-shifting statutes, tend to be modest. Courts often do not say whether an award of a few thousand dollars for an "improvident removal" under § 1447(c) applies to parties or counsel or both. In these low-stakes affairs, parties and counsel can work that out among themselves, and appeals are uncommon. This case is unusual because of Petitioners' extravagant demand for an award of at least $167,000 directly from counsel, and because the Attorneys and their clients were already at odds for other reasons. Such an unusually large demand impelled the Attorneys to retain their own counsel, to terminate any ongoing relationship with their clients, and to appeal an adverse (preliminary) decision in the Bankruptcy Court. But this case is the rare exception, rather than the rule, and Petitioners provide no explanation for why this long-dormant issue is likely to recur, much less why this Court needs to address an issue that has commanded so little attention in the federal courts. Even if the Court of Appeals' holding had contravened other appellate decisions, or had not followed applicable

precedents of this Court, or had misinterpreted the removal statute's legislative history or intent, or had fashioned a rule in violation of a clear public policy – *all of which is patently untrue* – Petitioners have not demonstrated why this case presents "compelling reasons" for the writ to be granted under the standards set forth in Rule 10.

CONCLUSION

For the reasons stated, respondent William J. Murphy respectfully requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

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APPENDIX

Signed: September 15, 2008
SO ORDERED

/s/
Duncan W. Keir
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Baltimore

In re:	)	
	)	Bankruptcy Case No. 07-11598
CRESCENT CITY	)	(United States Bankruptcy
ESTATES, LLC,	)	Court for the Eastern District
	)	of Louisiana)
Debtor.	)	
	)	(Chapter 7)
MR CRESCENT	)	
CITY LLC, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adversary No. 07-00662-DK
	)	
GIANNASCA	)	
CRESCENT	)	
CITY, LLC, *et al.*,	)	
	)	
Defendants.	)	
	)	

ORDER RESOLVING "PRELIMINARY ISSUES" AND
REQUIRING FED. R. CIV. P. RULE 26(f) REPORT

Plaintiffs, MR Crescent City, LLC, McCrary Crescent City, LLC and Michael C. McCrary (collectively, the "Plaintiffs"), have filed their Amended Motion of Plaintiffs MR Crescent City, LLC, McCrary Crescent City, LLC and Michael C. McCrary to Remand Adversary Proceeding and for Attorneys' Fees for Wrongful Removal (Dkt. No. 143) seeking an award of their attorney's fees and related costs (the "Attorney Fee Reimbursement Request") incurred as a result of this adversary proceeding's removal from, and remand to, the Circuit Court for Baltimore City, Maryland. Plaintiffs pursue the Attorney Fee Reimbursement Request against Giannasca Crescent City, LLC, Edward V. Giannasca, II, Crescent City Estates, LLC, Stuart C. (Neil) Fisher, TJ Biscayne Holdings, LLC, Market Street Properties Palm Beach, LLC and Tamara J. Fisher (all of whom were defendants in the adversary proceeding, collectively the "Defendants") and also William J. Murphy and Douglas S. Draper (collectively the "Attorney Respondents").

Counsel for the Plaintiffs and the Attorney Respondents filed a Joint Report in Conformity with Fed. R. Civ. P. Rule 26(f) as Directed by Court Order (Dkt. No. 149) (the "Joint Report", docketed as Dkt. No. 161) which identified certain "Preliminary Issues" which the Attorney Respondents believed were pure legal issues which might be dispositive of the Attorney Fee Reimbursement Request.

Pursuant to this Court's Order Staying Discovery and Setting Deadlines for Points and Authorities (Dkt. No. 166), the Plaintiffs and the Attorney Respondents submitted legal memoranda, and the Court conducted a hearing on September 4, 2008 to

consider "Preliminary Issues" 1 through 3 as described in the Joint Report to determine whether any of the "Preliminary Issues" raised grounds for dismissal of the Attorney Fee Reimbursement Request against the Attorney Respondents and/or to the extent applicable any of the Defendants.

Accordingly, based upon consideration of all of the legal memoranda, the argument in open Court on September 4, 2008 and for the reasons stated in open Court at the conclusion of the hearing, by the United States Bankruptcy Court for the District of Maryland , it is hereby,

1. ORDERED that each of the grounds for dismissal of the Attorney Fee Reimbursement Request set forth in "Preliminary Issues" 1 through 3 is OVERRULED.

2. ORDERED that the Attorney Fee Reimbursement Request is not dismissed against any of the Defendants or the Attorney Respondents.

3. ORDERED that pursuant to Bankruptcy Rule 9014(c), adopting Bankruptcy Rule 7026, this Court expressly directs that Fed. R. Civ. P. 26(f) applies to the Attorney Fee Reimbursement Request.

4. ORDERED that the Plaintiffs, the Defendants and the Attorney Respondents shall file a joint report in compliance with Fed. R. Civ. P. Rule 26(f) no later than October 6, 2008.

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End of Order